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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

March 12, 2003

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MEMORANDUM ORDER

MAR 9 2003

Special Communications Commission
Office of the Secretary

Philippine Long Distance Telephone Company (PLDT)
SMART Communications Inc
GLOBE Telecom, Inc
Bayan Telecommunications, Inc.
Other Public Telecommunications Entities (PTEs) similarly situated

This Commission is in receipt of the Order of Mr. Donald Abelson, Chief, International Bureau of the United States Federal Communications Commission (FCC) dated March 10, 2003 (the "Abelson Order") ordering all facilities-based carriers subject to FCC jurisdiction to suspend all termination payments to the Philippine Long Distance Telephone Company ("PLDT"), Globe Telecom, Inc. ("Globe"), Bayan Telecommunications, Inc. ("Bayantel"), Digital Telecommunications Philippines, Inc. ("Digitel"), Smart Communications, Inc. ("Smart") and Subic Telecom ("Subicel") (collectively, "the Affected Carriers") until such time as the US FCC issues a Public Notice that AT&T's circuits on the US-Philippines route are fully restored.

On February 7, 2003, this Commission issued an order to the Philippine carriers "without existing and effective agreements relative to termination rates . . . to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service."

On February 26, 2003, this Commission conveyed its official position on the termination rate dispute to the FCC, this Commission's counterpart regulatory agency in the United States, and among others stated in said letter that "*absent any provisional or interim arrangement or agreement, there would be termination of service between the parties who are thereby encouraged to seek other routes or options to terminate traffic to the Philippines.*"

Nonetheless, this Commission continues to encourage Philippine carriers with no existing and effective agreements with foreign carriers relative to termination rates to negotiate and conclude bilateral agreements

The Abelson Order clearly frustrates the mandate of this Commission, its orders and issuances

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This Commission is tasked to enforce the declared national policy of Republic Act 7925 "to develop and maintain a viable, efficient, reliable and universal telecommunications infrastructure using the best available and affordable telecommunications technologies as a vital tool to nation-building and development." To attain this objective, the telecommunications industry must be able to generate and collect revenues on a timely basis and plow them back into expansion and improvement of the telecommunications infrastructure for sustained growth and development.


The Abelson Order is detrimental to the attainment of this objective. By ordering a suspension of all payments, whether for services already rendered, or services yet to be rendered, the Abelson Order undermines the very foundation of the viability and efficiency of the Philippine telecommunications industry.

To prevent injury to the Philippine telecommunications industry that this Commission is mandated to protect, this Commission hereby provides its direction to Philippine carriers on the effect of the Abelson Order vis-à-vis this Commission's official position.

The ultimate effect of the Abelson Order is *first*, to punish Philippine carriers who are within the jurisdiction of this Commission and not of the US FCC; *second*, to increase the cost of calls on Filipino consumers; and *third*, to impair established rights and obligations arising from contracts already perfected. Therefore it is incumbent upon this Commission to assert its jurisdiction.

The Commission has observed the incident before the International Bureau of the US FCC and without passing on the question of the International Bureau Chief's jurisdiction to render his final conclusion in the incident, we point out that the conclusions made in the Abelson Order are without basis. Notably, the Abelson Order has characterized the interconnection agreements of the Affected Carriers for termination rates amongst themselves as concerted action to "whipsaw" US carriers and force them to agree to identical termination rates. Interconnection among Philippine carriers is mandated by law, and Philippine interconnecting carriers must, by the same law, charge non-discriminatory rates. Thus, actions taken by Philippine carriers in compliance with the domestic law on interconnection and non-discriminatory charges do not constitute concerted anti-competitive action. Each Philippine carrier nonetheless remains free to negotiate with its foreign counterpart for termination rates.

This Commission maintains, as contained in its position to the FCC of February 26, 2003, that the Philippine carriers' US \$ 0.12 per minute (for calls terminating to fixed line network) and US \$ 0.16 per minute (for calls terminating to mobile network) termination rate offers are fair and reasonable, being well within the benchmarks of both the FCC and the International Telecommunications Union (ITU). Benchmarks serve the purpose of setting forth universally acceptable standards of what is fair and reasonable and are



accorded respect. It is ironic that the Abelson Order now puts in question and negates the very benchmarks established by the US FCC.

PREMISES CONSIDERED, this Commission hereby **DIRECTS** all the Affected Philippine carriers, and all other Philippine carriers who, though not specifically named in the Abelson Order, may likewise be affected by it.

- (1) Not to accept terminating traffic via direct circuits from US facilities-based carriers who do not pay Philippine carriers for services rendered; and
- (2) To take all measures necessary to collect payments for services rendered in order to preserve the viability, efficiency, sustained growth and development and continued competitiveness of the Philippine telecommunications industry.

SO ORDERED.


ARMI JANE B. BORJE
Commissioner


KATHLEEN G. HECETA
Deputy Commissioner


JORGE V. SARMIENTO
Deputy Commissioner

Copy furnished : The Executive Secretary, Malacanang
The Secretary, Dept. of Transportation and Communication
Attn: Undersecretary Virgilio L. Pena